

EXHIBIT C

Page 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)
)
SECURITIES INVESTOR)
PROTECTION CORPORATION,)
)
Plaintiff-Applicant,)
)
vs.) 08-01789 (SMB)
)
BERNARD L. MADOFF)
INVESTMENT SECURITIES, LLC,)
)
Defendant.)
)
)
In re:)
)
BERNARD L. MADOFF,)
)
Debtor.)
)

Videotaped Deposition of BERNARD L.
MADOFF, VOLUME I, taken on behalf of the Customers,
before K. Denise Neal, Registered Professional
Reporter and Notary Public, at the Federal
Correctional Institution, 3000 Old Highway 75,
Butner, North Carolina, on the 26th day of April,
2017, commencing at 9:07 a.m.

* * * * *

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1 Q. (By Ms. Chaitman) Now, to your knowledge
2 has the Trustee settled with each of these four
3 families?

4 A. I believe so.

5 Q. Okay. You testified the last time you were
6 deposed by me that the fraud did not begin until you
7 began doing the split strike conversion strategy in
8 1992?

9 A. Correct.

10 Q. Now, was it, as Judge Bernstein used the
11 expression, a light switch? When you started doing
12 a split strike, did you stop buying any securities
13 for the split strike customers?

14 A. No. I had started -- I had started buying
15 -- doing the strategy for probably through 1993; but
16 as more money came in, that's when my problem began
17 because I couldn't put it all to work in the
18 strategy. And I had committed that I would keep all
19 the money working.

20 Q. Okay. I just want to say one thing. I
21 have seen statements as early as July 1991 which
22 seem to be in split strike. Are you saying that it
23 wasn't -- I'd like you to give me your best
24 recollection of when you stopped buying securities
25 for the split strike customers.

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1 A. Sometime post-'92. As I started, you know,
2 I was still buying it in '92 and also through most
3 of '93. After that, that's when I stopped buying
4 securities for split strike.

5 Q. Okay. Now, you continued to have some
6 customers who were in convertible arbitrage?

7 A. Correct.

8 Q. Did you continue so long as people were in
9 convertible arbitrage, did you actually buy those
10 securities?

11 A. Yes.

12 Q. Okay. So it was only in the split strike
13 that you stopped buying the securities?

14 A. Correct.

15 Q. Okay. Do you derive any kind of benefit
16 from your testimony as to when the fraud started?

17 A. No.

18 Q. Does it benefit anyone in your family?

19 A. No.

20 Q. If the Trustee claims you're lying as to
21 when the fraud started, is there any conceivable
22 benefit that you enjoy by virtue of that testimony?

23 A. No.

24 Q. Does this testimony benefit any of your
25 family members?

Page 19

1 Q. Okay. So you took the money --

2 A. Which is part of the strategy as well.

3 Q. Right. So you basically took the money
4 that went into the 703 account?

5 A. Correct.

6 Q. Which was the investment advisory
7 customers' money?

8 A. Correct.

9 Q. And you purchased Treasury bills with that?

10 A. Correct.

11 Q. And in the early '90s the Treasury bills
12 were bearing an interest rate of about six percent;
13 isn't that true?

14 A. No. They probably were -- you know, they
15 were short-term T bills, so they were probably, you
16 know, closer to three to four percent.

17 Q. Okay. And that three to four percent was
18 money that was earned by the customers --

19 A. Correct.

20 Q. -- whose money you were using?

21 A. Correct.

22 Q. And, in fact, the statements reflected the
23 ownership of those Treasury securities?

24 A. Correct. And they -- well, they also, you
25 know, reflected the ownership of the securities that

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1 I wasn't buying.

2 Q. Right. Now, in late 1993 or early 1994 was
3 your business, you were operating at that point as a
4 sole proprietorship; is that right?

5 A. Yes.

6 Q. Was your business insolvent?

7 A. No.

8 Q. At what point in time did you become
9 insolvent? And when I say you, I mean your sole
10 proprietorship or the limited liability company.

11 A. I would say probably in the early 2000s,
12 maybe somewhere between let's say '98 and 2002.

13 Q. Okay. And what --

14 MR. SHEEHAN: Can I just -- before you get
15 an answer, two things. One is I don't know what
16 insolvency means.

17 MS. CHAITMAN: Oh, okay.

18 MR. SHEEHAN: I'm going to ask to define
19 that.

20 MS. CHAITMAN: Okay.

21 MR. SHEEHAN: And I'm not going to
22 interrupt you again because I'm just going to have a
23 continuing objection to leading questions, which is
24 you're testifying more than he is, but I don't care
25 about that. Just objecting. All right.

Page 24

1 Q. For all of the employees at first the sole
2 proprietorship?

3 A. Right, right.

4 Q. And then all of the employees at the LLC?

5 A. Yes. It never changed, right.

6 Q. Okay. And is it fair to say that at times
7 money went from the 703 account to the Bank of New
8 York account?

9 A. Yes. There were some instances that --
10 that I used that, but the issue is because all of
11 these clients had margin accounts because they were
12 short securities, whether it be convertible
13 securities or whether it be the split strike trades,
14 their -- the assets of the client is fungible with
15 the firm because the long positions, whether it be
16 Treasury bonds or whatever, is the collateral for
17 the exposure on the short side of the firm.

18 So there were sometimes where relatively
19 small amounts of money, I think, in the late '90s
20 went from the 703 account into the Bank of New York
21 account to cover -- what was not, I don't think,
22 understood in the Dubinsky report among a lot of
23 other things was that customers have short
24 positions. They're mark to market from the clearing
25 corporation every day and short position being the

Page 25

1 difference in the market. As the stock market goes
2 up, the short position goes up. The customer gets a
3 call which is called a margin call.

4 So typically the money would come from the
5 customer account to meet those margin calls. So we
6 had -- we had margin calls that we had to make to
7 the clearing corporation, which all that which was
8 done through the Bank of New York account.

9 So by taking the money from the client
10 account, putting it into the Bank of New York
11 account, that allowed us to meet the margin calls of
12 the clearing corporation. That is typical of the
13 industry.

14 Q. Okay. Now, I want to ask you something
15 else since you've mentioned the margin. If you --
16 if someone had a margin loan and you bought stock
17 for them --

18 A. Right.

19 Q. -- would that stock be segregated in a
20 clearing or custody account for that customer?

21 A. No.

22 Q. Why is that?

23 A. Because margin, the whole concept of a
24 margin account is the firm is allowed to use those
25 securities to borrow money to cover, you know, what

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1 buying treasuries when we start the split strike
2 conversions. So that would have been, you know, in
3 the '90s.

4 Q. Okay. And to the best of your recollection
5 at any given time how much investment advisory
6 customers' money was held in U.S. treasuries?

7 A. Well, I would say basically the maximum
8 that we had was between five firms we had about
9 two-and-a-half billion dollars between Morgan
10 Stanley, Lehman Brothers, Bear Stearns and Fidelity.
11 Was that five firms? Four firms. And JP Morgan.

12 Q. Okay.

13 A. So I would say probably the maximum was
14 probably about \$6 billion held in treasuries.

15 Q. Okay, okay. Did it fluctuate or did you
16 instruct your staff to maintain that amount?

17 A. No. It pretty much fluctuated depending
18 upon the monies that came in and the monies that --
19 monies that came out.

20 Q. What percentage of the investment advisory
21 customers' money was put in Treasury securities, if
22 you can estimate that?

23 A. Well, I mean, the most we had -- I mean,
24 the customer statements depending, you know, at the
25 end was 60 some odd billion dollars.

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1 Q. Not what the statements showed, but what
2 you actually did.

3 A. What we actually did?

4 Q. Yeah. How --

5 A. I don't understand your question.

6 Q. Let me step back a minute. Were the people
7 on the 17th, were any of the people on the 17th
8 floor authorized to buy Treasury securities?

9 A. Yes.

10 Q. Who was authorized to buy Treasury
11 securities?

12 A. Frank DiPascali, Eric Lipkin and a fellow
13 by the name of Robert Romer.

14 Q. And they were -- what money were they
15 authorized to use to buy the Treasury securities?

16 A. Whatever -- they followed the instructions
17 of basically Frank DiPascali, who was the manager of
18 that department. And the money, the money to buy
19 the securities always came from customer money
20 except for a small amount of treasuries or financial
21 instruments that came from the operating operations
22 of the market making proprietary trading side.

23 Q. Okay. So the money came from the 703
24 account, is that what you're saying, except for
25 the --

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1 A. For the most part, yes.

2 Q. Except for the money that came from the BNY
3 account?

4 A. Right.

5 Q. Okay. Now, did you ever have a lock-in
6 period like hedge funds would have which would
7 prevent a customer from immediately demanding a
8 redemption on their money?

9 A. No.

10 Q. Was there any period of time from the end
11 of 1993 to 2008 when you were unable to honor a
12 customer redemption?

13 A. No.

14 Q. Was there anytime between 1993 and 2008
15 when you felt that you couldn't redeem a customer's
16 account unless you brought in new investment
17 advisory customers?

18 A. No. Well, I would say during -- in 2008
19 probably that half the market was -- was collapsing.
20 There would have been -- had customers requested
21 money, I wouldn't have been able to do it, but no
22 one had ever requested it.

23 Q. Okay. So, well, you did have significant
24 redemptions in 2008?

25 A. Yes, at the very end in December.

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1 Q. Okay. And prior to December 2008 --

2 A. But there was always -- there was -- you
3 know, I never got an official request for redemption
4 that I didn't have money to cover it to my
5 recollection other than maybe the last week in
6 December.

7 Q. Okay.

8 A. The last, you know, week that I was in
9 business.

10 Q. Okay. So in the entire period when you
11 were not buying the split strike securities starting
12 say late 1993 or early 1994, had you ever received a
13 redemption request where you thought oh, my God,
14 I've got to bring in a new customer to have the
15 money to pay this?

16 A. No.

17 Q. Did you actively solicit new investment
18 advisory customers?

19 A. No.

20 Q. Why not?

21 A. Because the firm was in a position that we
22 were always turning away investors. We never --
23 never solicited, you know, new monies coming in. As
24 a matter of fact, we tried to return monies at times
25 but met resistance with clients.

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1 Whether or not we executed the transaction
2 or not, they had opened up, you know, accounts, what
3 would be deemed as a margin account, and that
4 automatically allows you to commingle the
5 securities.

6 Q. Okay. So you did have -- you did have
7 physical possession of the securities with the
8 margin accounts?

9 A. When we were buying them, yes.

10 Q. Okay. Now, you referenced the change from
11 physical securities to electronic securities. Can
12 you pinpoint when that occurred?

13 A. I don't remember any longer. I would say
14 sometime during the '90s.

15 Q. Would it help if I told you that the
16 Securities Investor Protection Act was enacted in
17 1970?

18 A. No.

19 Q. Okay. Now, when you were doing the
20 convertible arbitrage, did you ever use a strategy
21 called legging in?

22 A. Always.

23 Q. Okay. And can you explain what legging in
24 means?

25 A. Legging in means that when you're doing a

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1 strategy, whether it be for convertible securities
2 or for the split strike, you go in and you don't buy
3 everything typically in one day.

4 You start -- when the firm makes a decision
5 to effect a strategy, whether it be convertible
6 bonds or whether it be a basket strategy and a split
7 strike where you're buying, you know, a portfolio of
8 securities, the skill of the strategy is to being
9 able to judge the market.

10 So you -- if when you're going out and
11 buying securities, you would start buying it let's
12 say on a Monday, Tuesday, Wednesday, Thursday.
13 Typically you would buy it over a four-day period
14 was basically what our practice is. And you would
15 have different prices during the four-day period.

16 And all of our strategies use what's
17 defined as an average price transaction, which means
18 we would then take the average price that we bought
19 stock during that four-day period and that would be
20 the -- you know, we'd figure what the average was
21 that we paid and then we would -- we would send the
22 customer a confirmation on the last day.

23 So let's say on a Thursday, we started on
24 Monday. And if you start -- to make a simple
25 example, let's say you did it over four days and you

1 paid -- you started buying stock at 50 and you wound
2 up buying it at, you know, up to 51 and you had an
3 average of 50-and-a-half, you would -- you would
4 place five-and-a-half.

5 Q. Was that unique to you or was this
6 something --

7 A. No. That's typical for any firm that is
8 investing in a strategy and treating -- you know,
9 that's treatable to customers the same in a
10 particular strategy.

11 Q. Now, you testified last time that Mr.
12 Dubinsky apparently lacked an understanding of that
13 strategy?

14 A. Well, he -- he must have. He must have not
15 understood the strategy because his report failed to
16 -- failed to state that. So, for example, where
17 Dubinsky, when he was trying to analyze the prices
18 that a customer paid in relationship to the market,
19 he would look on whatever the trade date was on the
20 confirmation.

21 And the trade date on the confirmation, for
22 example, would be -- an example I use would be the
23 trade date would be Thursday's trade date. If the
24 stock had traded at 51 and on that day if that was
25 the higher, the lower the stock and the average was

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1 50-and-a-half for the customer, there would be a
2 difference. So it wouldn't match up. Now, the
3 customer, the customer confirmation always stated --
4 there was a legend on it that said that the
5 transactions effected for the customer was an
6 average price transaction.

7 So right away that would -- that would
8 illustrate that he wasn't accounting for the -- for
9 the fact that the transaction was an average price
10 transaction.

11 The same thing would happen when you -- the
12 same error he made when he accounted for volume
13 because he would just look at the volume that
14 occurred on the one day, on the date of the trade
15 date, as opposed to the volume that happened on the
16 four days. So, obviously, he's looking at the
17 volume on one day when you should be looking at the
18 volume on four days.

19 Q. Now, Mr. Madoff, Mr. Dubinsky testified at
20 the Bonventory trial that the Trustee paid him over
21 \$30 million to do his report. Did he at any time
22 ever seek to talk to you?

23 A. No.

24 Q. To your knowledge did he or anyone on his
25 behalf ever seek to meet with you to discuss how you

1 operated the business?

2 A. No.

3 Q. Did anyone working with the Trustee ever
4 ask you any questions about how your convertible
5 arbitrage trades were done?

6 A. No.

7 Q. Did anyone working with the Trustee ever
8 question you about any activity of the firm that
9 predated 1992?

10 A. No.

11 Q. Now, you mentioned with respect to the
12 purchase of Treasury securities with the investment
13 advisory customers' money that the purchases were
14 done through Bear Stearns, Morgan Stanley, Fidelity,
15 Lehman Brothers and JPMorgan Chase?

16 A. Right.

17 Q. Were there also purchases done directly by
18 Frank DiPascali, Eric Lipkin and Robert Romer?

19 A. Correct.

20 MS. CHAITMAN: I'm going to mark as
21 Exhibit 15, which is the next number from our last
22 deposition, a compilation of trade tickets. I have
23 two if you each want one.

24 (Customers Exhibit 15 was marked for
25 identification.)

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1 A. Yes.

2 Q. And it would have been held for the benefit
3 of the investment advisory customers?

4 A. It would have been -- it would have been
5 held at the firm for the benefit of the firm. We
6 didn't segregate, you know, these securities.

7 Q. But if the money that was used to purchase
8 this --

9 A. Uh-huh.

10 Q. -- came from the 703 account, would this
11 show up, for example, on your focus reports?

12 A. This particular -- I don't know. I mean,
13 the only trades that -- if it went through the
14 Bloomberg terminal, typically that would show up --
15 I don't know if it would show up on the focus
16 report.

17 It depends upon whether the trade was
18 bought for -- there were some trades that were
19 bought -- well, not if it was bought by the people
20 that you mentioned. They only have the authority to
21 execute trades for client accounts, not for the
22 firm's account.

23 Q. Okay. So I'm confused.

24 A. These securities would be held either at --
25 typically it would be held at DTC or the Bank of New

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1 York.

2 Q. Okay.

3 A. I mean, I can't tell from that. It depends
4 upon where the trade would settle. Any of these
5 Bloomberg trades that went through the Bloomberg
6 terminal, it would actually be a money settlement
7 for the transaction. Otherwise, you couldn't -- you
8 couldn't do it.

9 Q. Okay. And that would be done through some
10 ins --

11 A. It would be done through some -- typically
12 through Bank of New York.

13 Q. Okay.

14 A. It could also have been done through JP
15 Morgan as well in delivery.

16 Q. Okay, okay. You didn't have the ability
17 yourself to clear Treasury security purchases?

18 A. Correct. We didn't have the authority to
19 execute and clear.

20 Q. Treasury security purchases?

21 A. Right.

22 MS. CHAITMAN: Okay.

23 MR. SHEEHAN: Helen, just for the record,
24 this seems to be -- you did call it a compilation,
25 but since there were different productions, one is

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1 Q. The feeder funds?

2 A. Those are the hedge funds.

3 Q. Those are the hedge funds. Okay. So were
4 you buying the Treasury securities then to protect
5 the private customers as opposed to the hedge funds?

6 A. I didn't look at it, you know. I didn't
7 isolate it one over the other because I knew I was
8 basically obligated for -- you know, for all of it.

9 Q. Okay. Now, you said that you purchased
10 Treasury securities with the 703 account money
11 through the five institutions that you named?

12 A. Right.

13 Q. Bear Stearns, Fidelity, Lehman Brothers,
14 JPMorgan Chase and Morgan Stanley --

15 A. Right.

16 Q. -- is that right?

17 A. Yes.

18 Q. Okay. It was only those five firms?

19 A. Yes.

20 Q. Okay. And did you maintain a consistent
21 portfolio of Treasury securities at each of those
22 institutions?

23 A. They were rarely sold unless they matured
24 and then we repurchased, you know, different, you
25 know, Treasury bills. Yes, I mean, for the most

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1 part the monies in those accounts built and became,
2 you know, more and more up to the maximum, which
3 was, I think, \$500 million pretty much in each
4 account.

5 Q. So you maintained 500 million of Treasury
6 securities at each of those five firms?

7 A. Pretty much, yes.

8 Q. Okay. And then in addition you had the
9 portfolio that was purchased directly --

10 A. Correct.

11 Q. -- by the 17th floor people?

12 A. Right.

13 Q. Now, the market making and proprietary
14 trading people were buying and selling securities;
15 right?

16 A. Yes.

17 Q. And what kind of records were kept of the
18 securities that were held by the firm as of say
19 month end of each month? Was there a record kept of
20 an inventory of securities that were owned by the
21 firm as of the end of each month?

22 A. That the firm was long you're talking
23 about?

24 Q. Yes.

25 A. Yeah. That was -- you know, you were

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1 Q. I'd have to look at -- were there other
2 places that you held securities? Would I have to
3 look at, say, your account at Bear Stearns?

4 A. You would have to look at the banks if
5 there were -- if there were bank loans.

6 Q. Because if you borrowed from a bank, you
7 would have pledged the securities to the bank?

8 A. Right. Typically they would be held at
9 DTC, but they would be in the bank's account at DTC.
10 They would be journaled over to the bank. So you'd
11 have to look at the DTC -- you'd have look at the --
12 you would have to get that from the bank themselves
13 because DTC would not give them to you.

14 Q. What banks did you borrow money from where
15 you pledged the securities to the banks?

16 A. It could be JP Morgan. It could be Bank of
17 New York, you know, depending on what period; but if
18 you were looking at 2008 or 2000s, it would be
19 typically Bank of New York, M&T, it could be JP
20 Morgan. I think that's -- those are the banks that
21 we used at that time.

22 Q. And if it's earlier?

23 A. You'd have to look at any one of the -- you
24 probably couldn't get them, you know, but it would
25 be the banks that I mentioned to you.

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1 Q. Did you ever need new cash from new
2 customers to pay the earnings that were reported on
3 the statements?

4 A. No. Let me make a statement that I have
5 never to my recollection ever had a conversation
6 with a Trustee, ever. The Trustee never met with
7 me, never spoke to me, never asked me anything from
8 the date of my arrest until currently. I've had
9 meetings with the attorneys when the attorneys came
10 down here after, you know, I don't know whether that
11 was 2010 or some year in that, but there was
12 nothing; but the Trustee, the only time I ever saw
13 the Trustee was at my proffer meeting with the SEC.

14 Q. In December 2008?

15 A. December of 2008. And as far as I recall,
16 he never asked me anything and I never said anything
17 to him.

18 Q. Okay. But did anyone from the Trustee's
19 law firm --

20 A. No. The law firm, yes. They came down at
21 one period of time. David Sheehan could -- was
22 present.

23 Q. Okay. But did they ever ask you whether
24 you actually executed the trades that were done in
25 the convertible arbitrage strategy?

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1 C E R T I F I C A T E

2 NORTH CAROLINA:

3 GUILFORD COUNTY:

4 I hereby certify that the foregoing
5 deposition was reported, as stated in the caption,
6 and the questions and answers thereto were reduced
7 to the written page under my direction; that the
8 foregoing pages 1 through 209 represent a true and
9 correct transcript of the evidence given. I further
10 certify that I am not in any way financially
11 interested in the result of said case.

12 I have no written contract to provide
13 reporting services with any party to the case, any
14 counsel in the case, or any reporter or reporting
15 agency from whom a referral might have been made to
16 cover this deposition. I will charge my usual and
17 customary rates to all parties in the case.

18 This, the 10th day of May, 2017.

19
20
21 K. Denise Neal
22

23 K. Denise Neal, RPR
24 Registered Professional Reporter
25 Notary Public No. 200517500101